IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 111 OF 2007

Dr. U. G. Nachinolkar,
R/o. "Anantdeep", House No.C-18/128,
Vodlem Bhat, Taleigao,
P.O. Caranzalem, Goa 403 003. ..... Petitioner.

V/s.

1. The State of Goa
through the Chief Secretary,
having his office at
Secretariat, Porvorim, Goa.

2. The Land Acquisition Officer,
Deputy Collector and S.D.O.
Sub-Division, Panaji,Goa.

3. Mr. Atanasio Monserate,
Former Minister for Town and
Country Planning,
r/o. Jack Sequeira Road,
Miramar, Goa. ..... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Ryan Menezes, Advocate for the Petitioner.

Mr. S. R. Rivankar, Govt. Advocate for the respondents No.1 and 2.

Mr. A. N. S. Nadkarni, Advocate for the respondent No.3.

CORAM : S.A. BOBDE &
N.A. BRITTO, JJ.

DATE : 11th June, 2007.

ORAL ORDER : (Per S.A. BOBDE, J.)

By this petition, the petitioner is challenging the Notification No.22-29-2005/RD dated 13.12.2005 under Section 6 of the Land Acquisition Act in respect of portion of the petitioner's property bearing Survey No.79/1 of Village Taleigao. The land is purportedly being acquired for construction of a road and widening of the exiting road from the Football Ground Taleigao to Tambdi Mati, Santa Inez.

2. A perusal of the maps on record shows that by the present acquisition the Government proposes to complete a connecting road between two main roads i.e. Panaji - (old road) Taleigao and Panaji, Santa Inez- (new road) Taleigao. Admittedly, the connecting road now sought to be completed is already in existence and three fourth of that road is a 8 metres wide tarred road. However, there is very small portion towards the Santa Inez side which has remained incomplete. That portion of the land belonging to the petitioner is now sought to be acquired.

3. Mr. Lotlikar, learned Counsel for the petitioner contended that the acquisition of the petitioner's property would result in diminishing its value. He submitted that this acquisition is not necessary because there is a road parallel to the proposed road which can be further constructed by the State for developing the connecting roads. Even, otherwise, according to the learned Counsel for the petitioner, the acquisition is illegal since the

objections have not been properly considered in accordance with Section 5-A of the Land Acquisition Act. The learned Counsel for the petitioner further submitted that the acquisition is vitiated on account of malafides of the then Minister Mr. Atanasio Monserate who had developed an interest in the petitioner's property and has brought about the land acquisition since the petitioner refused to part with the property to him.

4. Having considered the matter and heard both sides, it appears that there is no merit in the petitioner's arguments. It is clear that it would be much convenient for the respondent State to complete the existing road by acquiring the portion of the petitioner's property instead of developing some other parallel road. Secondly, there is no evidence on record to indicate that the decision to complete the existing road is actuated by malafides borne by Mr. Monserate.

5. As regards the third objection, viz. non-consideration of the petitioner's objection under Section 5-A of the Land Acquisition Act, we do not see any substance in the petitioner's contention. The Land Acquisition Officer has, admittedly, received the objections dated 29.11.2005 in writing from the petitioner. This was after a due notice. Thereafter, the Land Acquisition Officer had held an inquiry after inviting comments of the acquiring department and after giving hearing to the petitioner.

6. Mr. Lotlikar, learned Counsel for the petitioner submitted that the Land Acquisition Officer has not submitted his recommendations nor has he considered it properly. We do not think it so. It is important to see whether there is substantial compliance of the provision of Section or not and not merely a technical compliance. We find from the report that the Land Acquisition Officer has gone through the comments of the acquiring department and has come to the conclusion that the acquisition is in public interest. Accordingly, at the end of the report he has stated that an area admeasuring 20,333 sq. metres is finalised for acquisition. We, therefore, find that there is an application of mind to the relevant factors and the conclusion that the land should be acquired. It is true that the Land Acquisition Officer has not separately recorded his recommendations, but that seems to be implicit in the report. There is, therefore, a substantial compliance of Section 5-A of the Land Acquisition Act.

7. The learned Counsel for the petitioner, however, relies on a decision of this Court in ***Sukumar M. Khot & Ors. vs. State of Maharashtra & ors.,*** reported in 2006(4) Bom. C.R. 337. That was a case in which this Court considered the law laid down by the Supreme Court and again emphasized the importance of the report under Section 5-A and compliance of that provision. We find that the facts of that case are quite

different from the facts of the present case. In that case, the Collector has failed to comply with the mandatory provision of Section 5-A. He neither prepared a report, nor submitted his recommendations on the petitioner's objections to the State Government (vide para 19). That was indeed a substantial breach of the provision. We do not find the situation here to be similar.

8. Having regard to the circumstances of the case, we see no reason to interfere with the acquisition in exercise of the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The petition is, therefore, dismissed.

S.A. BOBDE, J.

N.A. BRITTO, J.

ssm.